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January 4, 1994

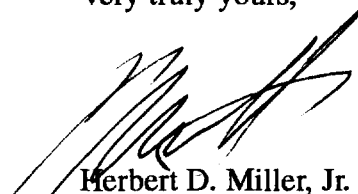
William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Dear Mr. Caton:

Transmitted herewith, on behalf of EZ Communications, Inc., the applicant in MM Docket Number 93-88 for renewal of the license of radio station WBZZ(FM), in Pittsburgh, Pennsylvania, is its Opposition to the petition of Allegheny Communications Group, Inc. to enlarge issues with respect to EZ's renewal expectancy.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Herbert D. Miller, Jr.

enc

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BEFORE THE
Federal Communications Commission
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In re Application of

EZ Communications, Inc.

For Renewal of the License of FM Radio Station
WBZZ (FM) on Channel 229B at Pittsburgh, Pennsyl-
vania

Allegheny Communications Group, Inc.

For a Construction Permit for a New FM Broadcast
Station on Channel 229B at Pittsburgh, Pennsylvania

MM Docket Number
93-88

To: Honorable Edward Luton
Administrative Law Judge

Opposition to Petition to Enlarge Issue re Renewal Expectancy

EZ Communications, Inc., (EZ), the applicant for renewal of the license of radio station WBZZ(FM), in Pittsburgh, Pennsylvania, files herewith, by its attorneys, its Opposition to the petition of Allegheny Communications Group, Inc. (Allegheny) seeking enlargement of issue with respect to EZ's alleged abuse of Commission processes and violation of Sections 73.3588 and 73.3589 of the Commission's Rules. The Allegheny petition is specious, and must be denied.

The Allegheny petition is a rehash of its June 28, 1991 Petition to Deny EZ's license renewal application, where Allegheny argued (pp. 17 - 23) that EZ was (a) absolutely disqualified and (b) entitled at best to a diminished renewal expectancy on account of the settlement of a civil action brought against it by a former

employee. By *Hearing Designation Order (HDO)* released on April 5, 1993 (DA 93-361), Allegheny's contentions were unequivocally rejected. As stated in the *HDO*,

"An abuse of process issue will not be specified. Section 73.3589 prohibits 'payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny or informal objection.' Here, **there is no evidence** that Randolph threatened to file a petition to deny or informal objection. Nor is there evidence that the payment to Randolph was in exchange for her agreeing not to file a petition to deny or informal objection. Moreover, while Allegheny is correct in its contention that an attempt to improperly influence a person with information would constitute an abuse of process, none of the cases cited by Allegheny support the conclusion that entering into an agreement to settle a civil suit constitutes such an improper influence. Allegheny's contentions that the settlement agreement infringes on its right to obtain the information it needs to successfully challenge EZ's license renewal is also without merit. Allegheny has the right to gather all the information concerning EZ that it can, consistent with the law. This it apparently has done. We fail to see how the settlement agreement has violated any of Allegheny's rights." (DA 93-361, ¶15) (emphasis added).¹

Allegheny's recycled contentions present no new facts, and no new law. EZ responded to all of Allegheny's contentions substantively in its July 29, 1991 Opposition to Petition to Deny, and sees no reason or need to burden this proceeding by doing so again here.

Allegheny is wrong in contending that the Commission's December 6, 1993 *Memorandum Opinion and Order* (FCC 93-513) denying its motion for leave to file an application for review of the *HDO* resurrects any of the contentions which the *HDO* rejected. The fact that

"the ALJ has discretion to add issues, based on a prima facie showing by Allegheny that EZ has violated the Communications Act, or the Commission's rules or policy, for consideration in conjunction with

¹ Although Allegheny seems to contend that its ability to gather evidence with respect to EZ's alleged violations was impaired (Allegheny Petition, p. 9), that is not the case, as noted by the *HDO*. And based on fully ventilated facts, the *HDO* concluded that there had been no violation whatever.

the renewal expectancy determination to be made in this proceeding"
(FCC 93-513, ¶13)

plainly does not mean that such issues can be added where there has been **no** violation of the Communications Act, **no** violation of any Commission rule, and **no** violation of any Commission policy. And the *HDO* properly found that had been none.²

Allegheny is also wrong in relying on the December 6, 1993 *Memorandum Opinion and Order* as establishing a new fifteen day period for the filing of motions to enlarge issue in this proceeding (Allegheny Petition, pp. 1 - 2). Section 1.229 of the Rules does not so provide. It permits the filing of motions to enlarge issues within fifteen days of the discovery of new facts (Section 1.229(b)(3)), but Allegheny has cited no new facts, and there are none³. Section 1.229 also permits the consideration of untimely motions to enlarge on a showing of good cause, but Allegheny has not even attempted such a showing. Absent a showing of good cause, an untimely motion to enlarge

"will be considered fully on the merits if (and only if) initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public importance as to warrant consideration in spite of its untimely filing."
(Section 1.229(c).

² Nor does the Commission's recent *Memorandum Opinion and Order* mean that the Presiding Administrative Law Judge must, or even that he has the discretion to, revisit the *HDO* determination that there was **no** evidence of violation to determine whether there was *prima facie* evidence. Obviously, a determination that there was *prima facie* evidence of violation would be directly contrary to the controlling *HDO* determination that there was **no** evidence of violation.

³ Nor has Allegheny cited to any new law, and there is none.

Even if there were some merit to Allegheny's substantive contentions (and there is none), and even if those contentions had not previously been authoritatively ruled on adversely to Allegheny (and they were), there is no reason to believe that they could rise to the level of "probable decisional significance," or that they are of substantial public importance.

Allegheny's untimely request for enlargement of issue should be denied.

Respectfully submitted,
EZ Communications, Inc.

By /s/ Rainer K. Kraus
Rainer K. Kraus

By /s/ Herbert D. Miller, Jr.
Herbert D. Miller, Jr.

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January 4, 1994

Certificate of Service

I, Richard Massie, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by First Class United States Mail, postage prepaid:

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* By hand

/s/ 
Richard Massie

January 4, 1994